

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DOC MADISON,

Plaintiff

Case No. 2:18-cv-12736

District Judge Victoria A. Roberts

v.

Magistrate Judge Anthony P. Patti

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

ORDER REGARDING BRIEFING SCHEDULE

On September 4, 2018, Doc Madison, proceeding without counsel, filed this action for a review of a final decision of the Commissioner of Social Security denying his application(s) for social security disability benefits. (DE 1.) The Court granted Plaintiff's application for leave to proceed *in forma pauperis*. (DEs 2, 5.) Summonses were issued, the Commissioner filed a notice of appearance, and, on December 11, 2018, an answer and transcript were filed. (DEs 8-12.)

The Court's initial scheduling order required Plaintiff to file a motion for summary judgment by January 10, 2019, with the Commissioner being required to file her own motion for summary judgment the following month. (DE 13.) However, Plaintiff did not file a motion for summary judgment, nor did he seek any extensions of time. On February 6, 2019, the Court entered an Order regarding

Plaintiff's failure to comply with the Court's scheduling order, and requiring him to show cause, in writing, on or before February 20, 2019 why this case should not be dismissed for failure to prosecute. (DE 14.) The Order also directed Plaintiff to propose a reasonable and conservative extended deadline for filing his motion for summary judgment, should the Court choose to permit it, and warned Plaintiff that his failure to comply with this Order could result in a Report and Recommendation that the Court dismiss this action pursuant to Federal Rule of Civil Procedure 41(b) and E.D. Mich. LR 41.2. (*Id.*)

On February 28, 2019, Plaintiff filed a late response to the order to show cause, stating that he "misplace[d]" the "documents that were mailed to [him] notifying [him] of the motion" and that he "found the documents just recently and [he] noticed that [he] was supposed to respond." (DE 15.) He further stated that he has been caring for his wife, who is ill. (*Id.*)

On March 1, 2019, the Court entered an order vacating the show cause order (but with some hesitation) and setting the following briefing schedule for the remainder of this action:

1. Plaintiff's motion for summary judgment is due **ON OR BEFORE APRIL 1, 2019.**
2. Defendant's response and cross-motion for summary judgment is due **ON OR BEFORE MAY 1, 2019.**

3. Plaintiff's reply is due **ON OR BEFORE MAY 15, 2019**.

(DE 16.) That order expressed warned Plaintiff **“that there will be no further extensions of time in this matter.”** (*Id.* (emphasis in original).) To date, Plaintiff has failed to file a motion for summary judgment, as required.

Although this matter could be dismissed pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute, the Court has an interest in deciding this case on its merits. Accordingly, I will not make a recommendation that this matter be dismissed at this time, but will instead exercise my authority as it relates to the scheduling order, which remains in effect. Accordingly, Defendant shall file her motion for summary judgment **ON OR BEFORE MAY 8, 2019**. Thereafter, Plaintiff may file a response brief in strict conformity with the Federal Rules of Civil Procedure, the Local Rules of this District, and my Practice Guidelines in all respects, including page limitations and format, **ON OR BEFORE MAY 22, 2019**. No further briefing will be allowed, unless requested by the Court.

IT IS SO ORDERED.

Dated: April 16, 2019

s/Anthony P. Patti

Anthony P. Patti
UNITED STATES MAGISTRATE JUDGE

Certificate of Service

I hereby certify that a copy of the foregoing document was sent to parties of record on April 16, 2019, electronically and/or by U.S. Mail.

s/Michael Williams

Case Manager for the
Honorable Anthony P. Patti